

REMARKS

I. Status of the Claims

Claims 1-20, and 22-29 are pending and undergoing examination. Claims 15-17 and 29 are withdrawn. Claim 21 has been cancelled. With this amendment, claims 1, 4, 11 and 17 are amended. Claims 2, 3, 6 and 7 are cancelled. The amendments of the claims and the rejection raised in the Office Action are discussed in more detail, below.

II. Amendments

Claim 1 is amended to incorporate the limitations of claim 3. Specifically, claim 1 as amended recites "wherein following said administering to a patient in the fed mode, the dosage form is retained in the upper gastrointestinal tract for a time period of about 4 to 9 hours."

Claims 4, 11 and 17 are amended to depend from claim 1.

Accordingly, the claim amendments do not introduce new matter.

III. Double-Patenting Rejection

Claims 1, 2, and 11-14 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 19, 20 and 40 of U.S. Patent No. 6,340,475. The Examiner rejected claims 3-10 as being dependent upon a rejected base claim but stated that claims 3-10 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

With this amendment, claims 2, 3, 6 and 7 are cancelled. Claim 1 is amended to recited all limitations of claim 3. Claims 4, 5, and 8-14 are amended to depend from amended claim 1. Accordingly, Applicants submit that claims 1, 4, 5 and 8-14 are patentable over U.S. Patent No. 6,340,475.

Applicants respectfully request withdrawal of the rejection under the judicially created doctrine of obviousness-type double patenting.

IV. Allowed Claims

The Examiner stated that claims 19-20 and 22-28 are allowed.

V. Conclusion

For the reasons above, Applicants respectfully submit that the pending claims are novel and non-obvious over the cited art. Furthermore, Applicants respectfully submit that all criteria for patentability have been satisfied and the pending claims are in full condition for allowance. A Notice of Allowance is therefore respectfully requested.

No fees are believed due with this communication. However, the Commissioner is hereby authorized and requested to charge any deficiency in fees herein to Deposit Account No.:50-4616.

If the Examiner has any questions or believes a telephone conference would expedite the prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 590-1919.

Respectfully submitted,

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